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ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

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November 20, 2000

Sent Via Overnight Mail

David P. Boergers, Secretary
Federal Energy Regulatory Commission
825 N Capital Street NE
Washington, DC 20426

Re: Avista Corporation, The Bonneville Power Administration,
Idaho Power Company, The Montana Power Company,
Nevada Power Company, PacifiCorp, Portland General
Electric Company, Puget Sound Energy, Inc., and
Sierra Pacific Power Company
Docket No. RT01-35-000

Dear Mr. Boergers:

Enclosed for filing are the originals and fourteen copies each of the Request for Extension of Time, Comments of the Washington Utilities and Transportation Commission, and Certificate of Service.

Very truly yours,

ROBERT D. CEDARBAUM
Senior Counsel

pah
Encl.

cc: Parties on Service List
Dick Byers
Alan Buckley



United States of America
Federal Energy Regulatory Commission

Avista Corporation,)	Docket No. RT01-35-00
The Bonneville Power Administration,)	
Idaho Power Company,)	
The Montana Power Company,)	
Nevada Power Company,)	
PacifiCorp,)	
Portland General Electric Company,)	
Puget Sound Energy, Inc.,)	
Sierra Pacific Power Company.)	

Comments of the Washington Utilities and Transportation Commission

I. INTRODUCTION

On October 23, 2000, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company (collectively, the "Filing Utilities") filed a "Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000." The filing describes the Filing Utilities' proposal, under Order 2000 of the Federal Energy Regulatory Commission, to form a regional transmission organization referred to as "RTO West." The filing also requests from the Commission a declaratory order that certain aspects of the proposal comply with applicable

requirements of Order 2000. These aspects include the proposed governance documents of RTO West, and the scope and configuration of RTO West.

By Notice of Filing, dated October 24, 2000, the Commission requested comments on the proposal to form RTO West and the Filing Utilities request for a declaratory order. The Washington Utilities and Transportation Commission (WUTC) has filed previously a Notice of Intervention in this docket. In the instant filing, the WUTC provides its comments on the specific proposals made by the Filing Utilities.

II. IDENTITY OF THE WUTC

The WUTC is a state commission having sole jurisdiction to regulate the retail rates, services, and practices of investor-owned electric utilities within the state of Washington pursuant to state law. *Title 80 Revised Code of Washington (RCW)*. In this capacity, the WUTC regulates the retail electric services and rates of Puget Sound Energy, Inc., Avista Corporation, and PacifiCorp.

The WUTC has authority under state law to act:

"... as petitioner, intervenor, or otherwise to initiate and/or participate in proceedings before federal administrative agencies in which there is at issue the authority, rates, or practices for transportation or utility services affecting the interests of the state of Washington, its businesses and general public, and to do all things necessary in its opinion to present such federal administrative agencies of all facts bearing upon such issues..." RCW 80.01.075.

III. COMMENTS OF THE WUTC

The WUTC thanks the Commission for this opportunity to submit comments on the RTO West proposal. We begin by emphasizing some of the context and process issues we believe are important for the Commission to consider as it examines the RTO West filing.

The Pacific Northwest relies on an electric system that includes diverse forms of utility ownership and that carries out diverse state electricity policies. Our region has a broad mix of investor-owned and government-owned retail utilities. Transmission and generation in the region are dominated by the Bonneville Power Administration. Some states have chosen to deregulate retail service, while other states have not. Retail rates vary across the region, but both investor-owned and public-owned utilities in the Pacific Northwest have among the lowest retail rates in the nation.

These circumstances reflect diverse interests. The task of reaching regional consensus on the development of a regional transmission organization is, at this point, a work in progress. Still, we believe that the broad range of interests entertained by the Filing Utilities in an open consultative process has lead to a proposal that makes substantial progress toward the goals set out by the Commission in Order 2000. Much hard work has been done and we believe that the RTO West filing is testimony to the region's progress. However, much work remains to be done.

We urge the Commission not to view the current filing as either a completed product, or as a product that is inadequate because it is, as yet, incomplete. Contributions from the full range of regional interests should not, and we are confident will not, cease now that filings have been made with the Commission. Work will proceed on issues that as yet remain to be addressed, or

on which consensus has not yet been achieved. At this point we encourage the Commission to avoid initiating formal process and litigation to resolve these issues and to provide time for the region to build on the progress already made. Advice and direction from the Commission regarding the framework and details of RTO West, as proposed in the current filing, would make a positive contribution to the work the region must still complete.

Our comments on the RTO West filing are not highly detailed because, as we describe below, three of the utilities who would participate in RTO West are subject to the jurisdiction of the WUTC. State statute requires that the WUTC approve assignment of the transmission assets of these three utilities to the RTO. *Chapter 80.12 RCW*. Our judgment about the details of RTO West and the way they affect the retail ratepayer in Washington and the broader public interest must, therefore, await the development of our own evidentiary record.

The comments we can make at this point fall into three categories:

- (A) A description of the WUTC process necessary under state statute;
- (B) A brief discussion of some of the issues we believe will be relevant in our process and which we recommend the Commission also consider as it evaluates the RTO West filing, and;
- (C) Comments on the Filing Utilities' specific requests for a declaratory order.

A. State Regulatory Process

Puget Sound Energy, Inc., Avista Corporation, and PacifiCorp are vertically integrated "public service companies" which provide bundled retail service in Washington state. *RCW 80.04.010*. All three are subject to the jurisdiction of the WUTC as to rates, services, and practices. *RCW 80.01.040(3)*.

All three utilities also own transmission assets that each proposes to assign to RTO West for operational control, tariff administration, and other purposes. The investment and operational costs of these transmission assets are currently being recovered as a component of the bundled retail rates approved by the WUTC and charged to Washington customers. Washington retail customers have been paying a return on, and recovery of, investment in these assets since they were originally allowed in rates—decades ago in many instances. These transmission facilities are used by the utilities to fulfill their obligations under state law to serve the public.

Washington state law requires public service companies to receive prior approval from the WUTC before property or facilities which are necessary or useful for the company to perform its duties to the public are sold, leased, assigned, or otherwise disposed. *RCW 80.12.020*. Therefore, Puget Sound Energy, Inc., Avista Corporation and PacifiCorp must apply to the WUTC for approval to assign their transmission assets to RTO West. Without WUTC approval, assignment of those assets to RTO West is deemed void (*RCW 80.12.030*) and would subject these utilities, their officers and employees to penalties under state law. *RCW 80.12.060*.

For criteria to determine whether approval of a requested sale, lease, assignment or disposition of property or facilities should be granted, the WUTC looks to its general statutory obligation to regulate in the public interest. With regard to RTO West, we expect that Puget Sound Energy, Avista Corporation, and PacifiCorp will file with the WUTC requests for approval to participate in RTO West. In particular, we anticipate that we will review the assignment of certain transmission assets to RTO West in accordance with the contract provisions of the Transmission Operating Agreement (TOA). At this point, we believe that state statute requires that we not only approve the TOA, but that we maintain continuing jurisdiction

over this contract as long as the facilities in question are owned by the companies, and necessary and useful to fulfill each company's public service obligation.

B. Important Issues on the Formation of RTO West

The WUTC shares with the Commission the objective that the transmission system be available, adequate, reliable, and cost-efficient. Transmission is a critically important component of electricity service to the ultimate customer, retail ratepayers. Its availability, reliability and cost-efficiency are imbued with the public interest. We believe that a number of issues will be relevant to our consideration of how the RTO West proposal affects the public interest. We offer that these are issues that the Commission should consider carefully as well. Issues we believe will be important in our evaluation of the companies' requests include the following. We stress that, in listing these issues, we do not prejudge their resolution. That determination will be made by us only upon development of an evidentiary record of all relevant facts and circumstances.

- 1. How does the proposal preserve and protect the interests of retail ratepayers who have historically depended upon, and who will continue to depend on, the transmission capability of the assets proposed to be transferred to RTO West?*

This is a threshold issue for us. The retail customers of Puget Sound Energy, Avista Corporation and PacifiCorp receive bundled service that includes the transmission necessary to transmit power reliably from the sources of generation owned or contracted by the companies to fulfill each company's retail service obligations. The transmission assets and rights held by the companies to provide this capability are now, and historically have been, paid for by retail customers. Retail customers should not be caused, through formation of RTO West, to lose either reliable service or the value of the assets for which they have been paying. We anticipate

that the TOA will contain provisions crucial to the preservation of the interests of retail customers.

2. Is RTO West as proposed likely to improve the efficiency of the wholesale power market and the cost-effectiveness of generation?

This issue is related to point (4) below. A significant amount of trade in electricity has historically existed, and exists today, in the western interconnection. In order to establish that improvement in the efficiency of this trade will be a benefit of the RTO, evidence that the wholesale power market currently suffers inefficiencies should be available.

3. Does the governance structure ensure independence from commercial interests in generation?

A key objective of Order 2000 is the separation of commercial interests in the wholesale generation market from decisions concerning access and use of the transmission system. To accomplish this separation, the governance of the RTO must be independent of the commercial interests of those using the system, while at the same time reasonably informed by those interests. The governance structure should also ensure that, working under the oversight of the Commission, RTO West operates with sufficient attention to broad public input to preserve the public interest in critical transmission services. Finally, the public agencies responsible for utility regulation or energy policy in states and provinces are ultimately accountable for the reliability and cost of electricity service. To fulfill this responsibility, these public agencies will, from time to time, require information regarding operation of the bulk power and transmission systems. A governance structure independent from commercial interest should provide meaningful and timely means for appropriate public agencies to obtain operational information necessary for them to fulfill their public obligations.

4. *Are reasonably estimated benefits of RTO West likely to outweigh the costs?*

We understand the difficulty of quantifying with precision the costs and benefits of a new regional transmission organization. Nevertheless, evidence that reasonably estimated benefits outweigh costs will be crucial for us to find that such a fundamental change in the way electricity service is provided to, and costs recovered from, retail customers in Washington is in the public interest.

5. *Will RTO West, as proposed, encourage or discourage the efficient construction of needed transmission and/or generation capacity?*

The Commission's objectives in Order 2000 aim not only at improving the efficient use of the existing generation and transmission systems, but also at improving the economic efficiency of decisions to construct new generation or transmission facilities. The western interconnection, by many accounts, needs additional generation capacity and, perhaps, additional transmission capacity. The manner in which RTO West manages transmission congestion will affect this question.

6. *Will RTO West, as proposed, undermine state retail access policy?*

Washington and other states in the RTO West region have not enacted a policy of open retail access. The formation of the RTO should not serve to frustrate or override Washington's existing policies and law regarding the obligations of public service companies.

7. *Will the pricing methods and policies of RTO West ensure that all fixed costs of the existing transmission system are recovered by transmission owners? Will these costs, and the costs of congestion, be recovered from customers and users of the assets in a manner that is fair, just and reasonable?*

Transmission owners currently recover the fixed and operating costs of their transmission assets through a combination of their retail rates and revenues recovered from off-system wheeling. The bundled retail rates are credited with the revenues from off-system wheeling. RTO West proposes to recover costs based on a “company rate” charged to loads as an access fee. However, it is not clear at this point whether or how the cost of transmission assets used to move power fully through or out of RTO West will be recovered. If ultimate delivery is made outside RTO West there is no load within RTO West to pay the access fee. In particular, the treatment of cost recovery for inter-regional inter-tie assets is unclear in this regard.

C. Declaratory Order Requested by the Filing Utilities

The Filing Utilities have requested the Commission to issue a declaratory order pursuant to Rule 207(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(2), regarding three aspects of the RTO West proposal: (1) the form of RTO West First Restated Articles of Incorporation and RTO West Bylaws; (2) the scope and configuration of RTO West; and (3) the form of Agreement Limiting Liability Among RTO West Participants. Three of the Filing Utilities (Bonneville, Idaho Power and PacifiCorp) request a declaratory order on a fourth aspect: that the concepts as a package embodied in the TOA and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements are consistent with Order 2000 and acceptable to the Commission. Our comments below outline issues we believe the Commission should consider in evaluating these specific requests.

1. Governance Structure, Articles of Incorporation, and Bylaws.

Subject to our own evaluation, the governance and membership class structure proposed by the Filing Utilities appear to be appropriate. An independent Board of Trustees that can

benefit from advice from an advisory committee of regional stakeholders, including state and provincial regulatory agencies, appears to satisfy the independence requirement of Order 2000. The proposal makes clear that the Board's decisions are not dependent on either support or approval of the advisory committee. We believe that is as it should be. The advisory committee plays an important role in bringing to the Board's attention issues significant to stakeholders. That role should not be expanded to include either issue "gate-keeping", or a requirement placed upon the Board to consult or seek approval of the advisory board. Either role would compromise Board independence.

2. Scope and Configuration of RTO West.

We recommend that the Commission consider the following issues in acting on the request of the Filing Utilities:

- Canadian Participation. We believe it is important that RTO West be able to accommodate participation of transmission-owning entities in Canada and encourage the Commission to preserve this flexibility.
- RTO Seams. Reasonable consistency in pricing and operational policies between adjacent RTOs will be important. We encourage the Commission to harmonize such "seams" issues as it considers RTO West and other western RTO proposals.
- Transmission Planning. The proposed scope and configuration of the RTO includes the description of a "transmission planning backstop role." The nature of this role requires

clarification. Will the RTO be empowered to build, or compel to be built, transmission or other facilities if they are necessary and other regional parties do not come forward to undertake them? We believe that if RTO West is to carry the obligation to operate a reliable and efficient grid, it must have the authority to ensure the construction of facilities necessary to meet those obligations.

- Ancillary Services. Related to the former point, the proposal states that RTO West will rely on market mechanisms to supply necessary ancillary services. We do not disagree with this as an initial plan; however, we encourage the Commission not to preclude RTO West from acting on its own to develop or otherwise ensure that adequate and reasonably priced ancillary services are available if market mechanisms fail. We believe this is an important backstop role given recent experience in California.
- Information Availability. RTO West proposes ultimately to act as a single electrical control area for its geographic scope. Its performance of this function will affect both reliability of service and operation of wholesale power markets dependent on its transmission services. Both of these issues are of crucial interest to state and provincial agencies responsible for reliable and reasonably priced retail electricity service. Operational information from RTO West may, from time to time, be necessary for these state and provincial agencies to fulfill their statutory roles. We urge the Commission to ensure that the RTO be required to make such information available in meaningful and practical ways when state and provincial agencies can demonstrate it is needed for them to fulfill their responsibilities.

- Facility Inclusion. The facilities to be included under RTO West control should be those necessary to enhance the efficiency of wholesale power markets and grid reliability. The Commission should look to the states and other appropriate local authorities to determine which facilities are necessary for this transmission function and which facilities are appropriately considered distribution and therefore not included in RTO West.

3. Liability and Insurance Provisions.

The WUTC generally supports the proposal of the Filing Utilities to execute contractual arrangements designed to clarify and manage the liability and related insurance issues affecting RTO West and its participating transmission owners. We cannot, at this time, provide detailed comments on the adequacy of the contract terms and mechanisms proposed to accomplish the liability management sought. However, we believe these issues affect the willingness of transmission owners to agree to participate in the RTO and, consequently, we believe it is important for the Commission to clarify its view of whether these provisions are appropriate and acceptable in the formation of an RTO.

4. Transmission Operating Agreement (TOA) and Agreement to Suspend Pre-Existing Transmission Agreements.

Three of the Filing Utilities—PacifiCorp, Idaho Power, and the Bonneville Power Administration--have requested the Commission to issue a declaratory order finding appropriate the “concepts as a package embodied in the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Contracts.” We are not sure what the Filing

Utilities mean by “concepts as a package,” but we do not believe that the TOA is sufficiently complete to support a declaration by the Commission. We encourage the Commission not to issue the declaratory judgment sought by the group of three Filing Utilities regarding these documents.

The TOA will be the contract by which the transmission owning utilities assign their transmission assets to the control of RTO West. The provisions of this contract will be critically important to the WUTC and to retail electricity customers in Washington. The Commission should take no action on it until it is complete. The following examples represent areas in which we believe the document requires further work:

- The relationship between RTO West and TransConnect (pending at the Commission under Docket RT01-15-000) regarding system planning and expansion, and cost recovery for expansion projects.
- The manner in which Firm Transmission Rights (FTR) will be assigned.
- The manner in which FTRs will be made subject to mandatory *auction.
- The manner in which revenues derived from FTR auctions will be credited to load serving entities.
- The manner in which load service obligations are determined by the RTO.

Regional parties are hard at work on these and other issues, and we recommend that the Commission offer any guidance that it deems appropriate based on its view of the as yet incomplete TOA.

IV. CONCLUSION

The WUTC appreciates this opportunity to offer comments on the proposal to form RTO West, as filed by the Filing Utilities in Docket RT01-35-000. The WUTC looks forward to

working with the other states and provinces in the RTO West area, and with other regional parties to perfect the RTO West proposal.

DATED This 20th day of November, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

A handwritten signature in black ink, appearing to read 'M. Showalter', with a stylized, sweeping flourish at the end.

MARILYN SHOWALTER, Chairwoman

A handwritten signature in black ink, appearing to read 'Richard Hemstad', with a large, looped 'H' and a trailing flourish.

RICHARD HEMSTAD, Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation)	
The Montana Power Company)	
Nevada Power Company)	DOCKET NO. RT01-35-000
Portland General Electric Company)	
Puget Sound Energy, Inc.)	
Sierra Pacific Power Company)	
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REQUEST FOR EXTENSION OF TIME

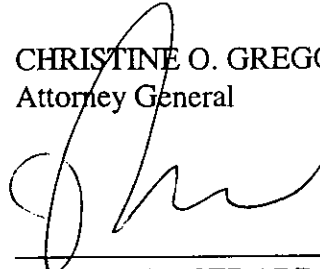
Pursuant to Order 619, the Washington Utilities and Transportation Commission (WUTC) requests an extension of time to file Comments in the above-referenced docket. In support of its request, the WUTC states as follows:

1. The WUTC is an agency of the state of Washington with jurisdiction to regulate the retail rates, services and practices of investor-owned electric companies in that state. Certain of the Filing Utilities in this docket are subject to the WUTC's jurisdiction.
2. The WUTC has filed previously its Notice of Intervention in this docket.
3. On November 20, 2000, the WUTC attempted to file its Comments in this docket by electronic mail, as authorized by the Commission in its Notice of Filing issued previously. Technical difficulties with respect to the Commission's website prevented our filing from occurring. Attempts through the Commission's Help Desk to rectify this situation were not successful.

Therefore, the WUTC requests that its Comments be accepted by the Commission out of time.

DATED this 20th day of November, 2000.

CHRISTINE O. GREGOIRE
Attorney General

A handwritten signature in black ink, appearing to read 'R. Cedarbaum', is written over a horizontal line.

ROBERT D. CEDARBAUM
Senior Counsel
Attorneys for Washington Utilities and
Transportation Commission

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation)	
The Bonneville Power Administration)	
Idaho Power Company)	
The Montana Power Company)	
Nevada Power Company)	
PacifiCorp)	DOCKET NO. RT01-35-000
Portland General Electric Company)	
Puget Sound Energy, Inc.)	
Sierra Pacific Power Company)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing Request for Extension of Time and Comments of the Washington Utilities and Transportation Commission upon each known party of record in this proceeding by mailing a copy thereof properly addressed to each such party by first class mail, postage prepaid.

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DATED this 20th day of November, 2000.



Robert D. Cedarbaum
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